

Madame President

With respect to DR 54, we note that the Environmental Compensation Fund was subject to discussion during the Open Ended Working Group on the Financial Mechanism last week. In our view the Council needs to urgently establish the appropriate parameters for the quantum of such fund. We understand proposals have been made for a payment based on changing metals prices. In our view, the protection of the environment is unrelated to the financial quantum generated by metals prices in the market. We believe that this Compensation Fund should be based on a detailed scientific and economic assessment of the potential expenses such Fund might face in accordance with DR 55. In our view the ISA should commission a review of the potential quantum necessary for any given project. We urge the ISA and LTC to establish a time frame to finalise the quantum within the next year and before the proposed July 2020 deadline.

Separately, we believe that after a period of time following the completion of mining activities, a determination should be made with respect to the allocation of any residual amounts remaining in the Compensation Fund. We believe that if Funds are no longer necessary to meet the obligations established within DR 55, after a reasonable period of time, such as perhaps 10 years following completion of mining, then any residual amounts remaining in the Fund can either be allocated to the general accounts of the ISA, or returned to the Contractor, or perhaps shared between each party. In no event should funds remain indefinitely if they are no longer needed. Accordingly the Council and LTC should give consideration to how the Fund shall be closed. In our view, the Fund should only close if there is a reasonable determination made by the Council that no further obligations remain to be fulfilled under Regulation 55.

Finally, MSI believes that it is essential that transparency and certainty apply with respect to the adoption of any financial regime. Under DR 81, any change in the system of payments shall only apply to new contracts and not to existing contracts. This might however be in conflict with DR 82. In DR 82 paragraph 2 the Council may apply a change in rates of payment following the completion of the Second Period of Commercial Production. At the moment this period has not been defined in Appendix IV to the Draft Regulations. MSI urges that some consistency be applied between the provisions of DR 81 and DR 82. DR 81 appears designed to provide certainty to all stakeholders that no system of payments regime changes can occur without mutual agreement, while DR 82 provides that a change can indeed occur immediately after the end of the Second Period of Commercial Production. It is therefore important to all stakeholders to define the period of time contemplated as “the Second Period of Commercial Production”. MSI does not have a suggestion as to the exact period of time that shall be considered for the Second Period of Commercial Production, but MSI respectfully suggests that it might reasonably continue to the end of the initial term of any first Exploitation Contract.

Thank you,

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